

Message Text

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ACTION EUR-12

INFO OCT-01 IO-10 ISO-00 CU-02 BIB-01 SAJ-01 ACDA-05

TRSE-00 OIC-02 CIAE-00 DODE-00 PM-03 H-01 INR-07 L-02

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 SCA-01

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TO SECSTATE WASHDC 796

C O N F I D E N T I A L GENEVA 1089

E.O. 11652: GDS

TAGS: CSCE, PFOR, XG, EGEN

SUBJECT: CSCE: BASKET II - OTHER AREAS: MIGRATORY LABOR

REF: (A) STATE 098624; (B) GENEVA A-192, MAY 18, 1974;
(C) GENEVA A-222, JUNE 22, 1974; (D) GENEVA A-247, JULY
17, 1974; (E) GENEVA A-341, OCTOBER 31, 1974; (F) GENEVA
A-52, FEBRUARY 4, 1975; (G) GENEVA 0847; (H) STATE 035196

SUMMARY: AS PART OF DETAILED REVIEW OF LEGAL ASPECTS OF
CSCE TEXTS, WE HAVE LOOKED AT MIGRANT LABOR RESOLUTION
NOW NEARLY COMPLETED IN BASKET II SUBCOMMITTEE ON OTHER
AREAS. INTRODUCTORY PARA NOTES PROBLEMS BEING REMEDIED
ARE EUROPEAN BUT DOES NOT SPECIFICALLY LIMIT OPERATIVE
PARAGRAPHS THAT FOLLOW TO EUROPE. IN ADDITION,
INSTODUCTORY PARAGRAPH RECENTLY TABLED BY SWISS MAKES IT
CLEAR OPERATIVE PARAGRAPHS ARE AIMS GUIDING BILATERAL
RESOLUTION OF PROBLEMS BY CONCERNED PARTIES. HOWEVER,
IF DEPARTMENT, IN LIGHT OF LEGAL REVIEW, NOT SATISFIED
THAT ABOVE COMMITMENT WEAK ENOUGH. WE ARE PRPARED IF
NECESSARY TO SEEK ADDITIONAL PREAMBULAR REFERENCES TO
MAKE IT CLEARER OPERATIVE PARAGRAPHS APPLY ONLY TO
EUROPE. IF DEPT DOES NOT REQUIRE SUCH AN ADDITION,
WE PLAN TO RAISE NO OBJECTION TO MIGRANT WORKER TEXT
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AND WILL ASSUME THAT PREVIOUS INSTRUCTIONS REMAIN IN

EFFECT (REF A, WHICH MENTIONS INTRODUCTORY PARAGRAPHS
CITING EUROPEAN PROBLEMS . REQUEST EARLY GUIDANCE. END SUMMARY.

1. MIGRANT LABOR RESOLUTION IN BASKET II COMMITTEE
ON OTHER AREAS IS NOW NEARLY COMPLETED. PARAGRAPH
REGISTERED AS CSCE II/H/108, MENTIONED REFA A, CON-
TAINS SEVERAL REFERENCES, BOTH BETWEEN AND OUTSIDE OF
BRACKETS, TO THE MIGRATORY LABOR PROBLEMS IN EUROPE.
UNBRACKETED REFERENCES ALONE MAKE IT QUITE CLEAR THAT
MIGRANT LABOR DOCUMENT THIS PARA INTRODUCES IS ADDRESSING
A EUROPEAN PROBLEM. DEPARTMENT'S INSTRUCTION (REF A)
CITED THIS INTRODUCTORY PARA AND NOTED THAT DEPT COULD
ACCEPT AGREEMENT IN MIGRATORY LABOR WHICH RELATES
SPECIFICALLY TO EUROPEAN PROBLEMS. HOWEVER, IN THE
ABSENCE OF MORE SPECIFIC INDICATIONS THAT OPERATIVE
PARAS IN MIGRANT TEXT APPLY ONLY TO EUROPE, THERE IS
SOME AMBIGUITY.

2. INTRODUCTORY PARAGRAPH RECENTLY TABLED BY SWISS MAKES
IT CLEAR THAT OPERATIVE PARAGRAPHS ARE MERELY AIMS
GUIDING BILATERAL RESOLUTION OF PROBLEMS BY PARTIES CON-
CERNED. PARAGRAPH WEAKENS LEVEL OF COMMITMENT AND LEAVES
ROOM FOR ARGUMENT THAT US NOT A PARTY CONCERNED. PARAGRAPH
IS NEAR AGREEMENT AND COULD BE PROPOSED FOR REGISTRATION MONRING
OF FEBRUARY 19. FOLLOWING IS TEXT WHICH WOULD IMMEDIATELY
PRECEDE OPERATIVE PARAS. BEGIN TEXT: ARE OF THE
OPINION THAT THE PROBLEMS RAISED BILATERALLY BY
THE MIGRATION OF WORKERS SHOULD BE DEALT WITH BY THE
PARTIES DIRECTLY CONCERNED, SO AS TO SOLVE THESE
PROBLEMS IN THEIR MUTUAL INTEREST, TAKING INTO ACCOUNT
THE PREOCCUPATION OF EACH COUNTRY CONCERNED TO ENSURE
A PROPER INTERNAL BALANCE BOTH FROM THE ECONOMIC AND
SOCIAL POINTS OF VIEW AND THE FOLLOWING AIMS IN
VIEW. END TEXT.

3. POSSIBLE PROBLEM IN CONTEXT OF DEPARTMENT'S LEGAL
REVIEW IS THAT AIMS MENTIONED IN OPERATIVE PARAGRAPHS SO CON-
FLICT WITH US LAW AND FEDERAL SYSTEM THAT THERE IS A REQUIRE-
MENT FOR ADDITIONAL SAFEGUARD IN FORM OF FURTHER INDICATION
THAT OPERATIVE PARAS DO NOT APPLY
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TO US. TEXTS TRANSMITTED REF AIRGRAMS OR IN
HANDS OF DEPARTMENT AT DRAFTING OF REF A. CONTAIN A
NUMBER OF AIMS WHICH COULD POSSIBLE CREATE LEGAL
CONFLICTS. EXAMPLES OF SUCH AIMS ARE RIGHTS EQUAL TO
THOSE OF HOST COUNTRY CITIZENS REGARDING SOCIAL SECUR-
ITY (H/120), EQUAL ACCESS TO EDUCATION (H/124), AND
THE OPPORTUNITY TO FIND NEW EMPLOYMENT IN THE EVENTS
OF UNEMPLOYMENT (H/121). IN LOOKING AT THESE TEXTS,

DEPARTMENT MAY FIND IT CONVENIENT TO REFER TO REF F
TRANSMITTING CIMPILATION OF REGISTERED TEXTS IN OTHER
AREAS (H/132).

4. IF DEPT FEELS STRONGLY THAT ADDITIONAL INDICATION
THAT OPERTIVE PARAS IN THEXT NOT APPLY TO US IS REQUIRED,
FOLLOWING SEEMS LIKE MAXIMUM NEGOTIABLE FIX AT THIS STAGE OF
WORK; US COULD SEEK TO INSERT WORKDS "IN EUROPE"
AFTER THE WORDS "PROBLEMS RAISED BILATERALLY BY THE
MIGRATION OF WORKERS" IN THEXT TRANSMITTED IN PARA
TWO ABOVE.

5. WE WOULD, OF COURSE, PREFER TO AVOID SUCH A
SOLUTION. WE ARE PRESENTLY ATTEMPTING WITHIN NATO
CAUCUS TO BLUNT EUROPEAN THRUST OF FRENCH CULTURAL
DECLARATION (REF G) AND FIFTEEN MAY WONDER ABOUT CON-
SISTENCY OF OUR POSTURE. THIS REGARD, WE NOTE DE-
PARTMENT HAS ACCEPTED K/129 (REF H) WHICH REFERS
TO MIGRATORY WORKDERS IN CLUTURAL CONTEXT WITHOUT ANY
QUALIFYING LANGUAGE.

6. IF DEPARTMENT DOES NOT REQUIRE ACTION SUCH AS
THAT SUGGESTED IN PAR 4 ABOVE WE WILL ACCORDINGLY
ASSUME THAT INSTRUCTIONS REF A REMAIN IN FEECT.
WE WILL RESERVE ON PROVISIONAL REGISTRATION OF SWISS PARA,
OR ACCEPT PROVISIONAL REGISTRATION ONLY IF ENTIRE
PARA BRACKETED, PENDING RECEIPT OF INSTRUCTIONS.
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